The California Legal Update

Remember 9/11/2001; Support Our Troops

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THIS EDITION'S WORDS OF WISDOM:

"*This year will go down in history. For the first time, a civilized nation has full gun registration. Our streets will be safer, our police more efficient, and the world will follow our lead into the future.*" (Adolf Hitler, 1935)

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***Cases*:**

CASES:

***Anonymous Tips and Reasonable Suspicion*:**

Navarette v. California (Apr. 22, 2014) __ U.S. __ [188 L.Ed.2nd 680]

Rule: An anonymous tip plus very little else will justify a traffic stop based upon a reasonable suspicion of criminal activity.

Facts: A woman called the California Highway Patrol 911 emergency number and reported that she had just been run off the road by the driver of a silver Ford 150 pickup with a license plate number of 8D94925. She told the dispatcher that the incident happened on southbound highway 1, at mile marker 88, in Humboldt County. This information was passed along to the CHP in neighboring Mendocino County. A northbound CHP officer passed the suspect vehicle at mile marker 69, about 18 minutes after the incident was reported to have happened. The officer did a U-turn and made a traffic stop approximately five minutes later despite not seeing the truck engaging in any reckless driving. Defendant was determined to be the driver with his brother (co-defendant) as the passenger. Upon noting the odor of marijuana, the truck was searched. Thirty pounds of marijuana were recovered. Defendants were charged in state court with various marijuana-related offenses. They brought a motion to suppress, arguing that they were stopped without sufficient reasonable suspicion to believe that they were engaged in any illegal activity. The trial court denied their motion. After pleading guilty to the illegal transportation of marijuana, defendants appealed. The Court of Appeal affirmed and the California Supreme Court denied review. The United States Supreme Court granted certiorari.

Held: The United States Supreme Court, in a split 5-to-4 decision, and in what the majority conceded was a "*close case*," affirmed. The Supreme Court previously held in *Florida v. J. L.* (2000) 529 U.S. 266, that an anonymous tip alone, without some form of corroboration, is insufficient to justify a detention (and/or a patdown). While the Fourth Amendment permits brief investigative stops, including of vehicles on the road, such a stop must be supported by a "*particularized*" reasonable suspicion that the occupants of the vehicle have been engaged in some sort of criminal activity. An uncorroborated anonymous tip alone does not meet this standard. The Supreme Court considered, for the sake of argument, the 911 call in this case to be an anonymous tip since there was no evidence concerning the identity of the woman who claimed to have been run off the road. The issue, therefore, is whether the 911 tip was sufficiently corroborated to allow the officers to stop the defendants' vehicle. The standard of proof is clearly described in prior case law: "The 'reasonable suspicion' necessary to justify such a (traffic) stop 'is dependent upon both the content of information possessed by police and its degree of reliability.' The standard takes into account 'the totality of the circumstances—the whole picture.' Although a mere 'hunch' does not create reasonable suspicion, the level of suspicion the standard requires is 'considerably less than proof of wrongdoing by a preponderance of the evidence,' and 'obviously less' than is necessary for probable cause." Also, "(r)easonable suspicion depends on 'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" In this case, the majority of the Supreme Court determined that the 911 tip was sufficiently corroborated, justifying the officer's conclusion that there was a reasonable suspicion to believe that defendant might be a

drunk driver; i.e.; "that the call bore adequate indicia of reliability for the officer to credit the caller's account." This "*indicia of reliability*" was supplied by the following: (1) The victim claimed eyewitness knowledge of the alleged dangerous driving, "lend(ing) significant support to the tip's reliability." "[An informant's] explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles his (or her) tip to greater weight than might otherwise be the case." (2) The circumstances indicate that the victim made a "contemporaneous report." Defendant was seen driving southbound on Hwy 1, some 19 miles from the alleged incident, some 18 minutes later. This all tends to corroborate the victim's veracity. "(S)ubstantial contemporaneity of event and statement negate the likelihood of deliberate or conscious misrepresentation." (3) The victim used the 911 emergency system, which allows for identifying and tracing callers. A tipster, knowing that he or she can easily be identified and located, is less likely to provide false information. Knowing all of the above, the Court concluded that the officer could reasonably rely upon the tipster's information that defendant had run her off the road. Also, such a dangerous act was sufficient to cause the officer to reasonably believe (i.e., a "*reasonable suspicion*") that defendant was driving while under the influence. "Running another vehicle off the road suggests lane-positioning problems, decreased vigilance, impaired judgment, or some combination of those recognized drunk driving cues." The fact that defendant did not repeat his dangerous driving, or show other indications of being under the influence for the five minutes that the officer was following him, was not sufficiently relevant to overcome the officer's belief that defendant was DUI. Under the "totality of the circumstances," the defendants in this case were lawfully stopped. Discovery of the marijuana during this stop, therefore, was lawful.

Note: Many courts (along with the rest of us) have really been uncomfortable with *Florida v. J.L.* since it was first decided. Under this landmark case decision, getting an anonymous tip of an armed person standing on a street corner, for instance, does not give you the right to detain or pat that person down for weapons. Per the court, it makes it just too easy for anyone, anonymously and therefore without any repercussions, to sic the police onto any unsuspecting victim for whatever ulterior purpose the tipster might be harboring. While you may still "consensually encounter" that person, without the right to check for weapons makes such a contact potentially very dangerous. Recognizing this, the lower courts, particularly in California, have been bending over backwards to justify detentions and patdown in such circumstances. The U.S. Supreme Court has now, with this new case, given its blessings to some very weak justifications for stopping and detaining someone based upon an anonymous tip.

***Search Warrants for Electronic Data*:**
***Search Warrants and Staleness*:**
***Search Warrants Protocols and Electronic Data*:**

United States v. Schesso **(9th Cir. Sep. 18, 2013) 730 F.3rd 1040**

Rule: A search warrant for computerized electronic data is not overbroad when there is no way of determining where the sought-after data may be stored. A search for child pornography is not stale when an expert can attest to the habit of pedophiles to save such information. The use of a search protocol, limiting access to relevant information only, is not constitutionally required.

Facts: German authorities advised U.S. Immigration and Customs Enforcement (ICE) agents that someone in the United States, with a specified Internet Protocol ("IP") address, had made available for downloading in October, 2008, an 18-minute child pornography video. The video was made available through a decentralized peer-to-peer file-sharing network known an "eDonkey," allowing users to share files over the Internet by connecting directly to each other's computers. The IP address was tracked to defendant at his Vancouver, Washington, residence. The information was passed on to Detective Patrick Kennedy and Senior Digital Forensics Investigator Maggi Holbrook, both of the Vancouver Police Department, who took over the investigation. Detective Kennedy prepared a search warrant and affidavit for defendant's home, seeking judicial authorization to look for and seize evidence of dealing in, and possession of, child pornography. The warrant authorized the search of defendant's residence for "[a]ny computer or electronic equipment or digital data storage devices that are capable of being used" for child pornography. The search warrant *did not* contain any protocols for sifting through the data or any provision for the return of non-evidentiary property. The warrant was executed at defendant's residence in June, 2010, resulting in the seizure of multiple pieces of electronic media and data storage devices, including external devices such as camera memory cards. Defendant submitted to an interrogation during which he admitted to the possession and viewing of numerous pieces of child pornography. The later forensic examination of the seized hardware was conducted by Investigator Holbrook, resulting in the discovery of some 3,400 images and 632 videos of commercial child pornography. Analysis of a camera memory card also uncovered sexually explicit images of a young girl, later determined to be defendant's niece. Defendant was charged in federal court with the production, distribution, receipt, and possession of child pornography. He filed a motion to suppress. The federal district court magistrate granted his motion, suppressing all the evidence. The Government appealed.

Held: The Ninth Circuit Court of Appeal reversed. The Court first rejected defendant's argument that the warrant affidavit was unconstitutionally overbroad. Specifically, defendant argued that there was a "lack of any guidance or limits in the warrant for subsequently searching the intermingled data that was (in his computers, etc.)." The Court held that it was not an issue that somewhere in defendant's computer system he had the pornographic video of a child that he'd up-loaded via eDonkey. Knowing this, the magistrate could draw a "reasonable inference" that there was also probable cause to believe defendant had other child pornography as well. The government had no way of knowing how many illicit files there might be or where they might be stored. So it was not possible for the affiant to describe the items to be seized in a more precise manner. As such, the warrant, in asking for "[a]ny computer or electronic equipment or digital data storage devices that are capable of being used" for child pornography, was not overbroad. The Court also rejected defendant's argument that the information in the warrant was "stale" even though it was not executed until some 20 months after defendant uploaded the pornographic video to eDonkey. A warrant is not stale so long as "there is sufficient basis to believe, based on a continuing pattern or other good reasons, that the items to be seized are still on the premises." The affiant, Detective Kennedy, included in his affidavit his belief (based upon his training and experience) that individuals who possess, distribute, or trade in child pornography, rarely, if ever, dispose of sexually explicit images of children because they tend to treat such photos as "prized possessions." As such, there was good reason to believe that child pornography would still be found in his residence on his computers. Defendant also complained that because his entire computer system, including attachments, was seized and searched, a "protocol" for preventing

the affiant from rummaging through other personal, irrelevant information should have been included. Such a protocol is called for in prior Ninth Circuit authority; *United States v. Comprehensive Drug Testing, Inc*. (9th Cir. 2010) 621 F.3rd 1162. *Comprehensive Drug Testing* specifies that in such a case, government officials should waive reliance on the "plain view doctrine," making other observed information not subject to seizure. As an alternative, the protocol requires that the defendant's computerized information be reviewed first by non-law enforcement personnel with only the relevant information, for which probable cause had been established, to be given to the police. The Court, however, found that the necessity for such a protocol is advisory only and not constitutionally required. And even if required, such a protocol was not necessary in this case in that contrary to what occurred in *Comprehensive Drug Testing*, the searching officers properly executed the warrant, seizing only the devices covered by the warrant and for which it had shown probable cause. And as it turned out, nothing was seized from defendant's computers that was not specified in the warrant. Lastly, even if any of the defendant's arguments, as discussed above, had any substance, the officers were acting in good faith in executing the warrant. Choosing to seek a search warrant from a state court magistrate instead of a federal magistrate in order avoid a federally imposed procedural rule (e.g., the protocol) does not negate a finding of good faith so long as the choice of courts was not done with the "knowledge . . . that the search was unconstitutional under the Fourth Amendment." Defendant's suppression motion, therefore, should have been denied.

Note: The Ninth Circuit's *United States v. Comprehensive Drug Testing, Inc.* is perhaps one of the most outrageous decisions ever issued out of that court. As initially written, the "protocol" referred to above, and which included more "safeguards" than discussed here, was mandatory. But there was so much protest that they rewrote the decision and made the protocol "advisory" only. And in either case, it is only applicable in situations like occurred in *Comprehensive Drug Testing* where massive amounts of computerized data, intermingled with private information for which no probable cause had been established, is involved.

Tasers and the Use of Force:

Gravelet-Blondin v. Shelton **(9th Cir. Sep. 6, 2013) 728 F.3rd 1086**

Rule: Use of a Taser in dart mode on a non-aggressive, non-resisting suspect, who at best has committed a relatively minor offense, is an excessive use of force under the Fourth Amendment.

Facts: Officers of the Snohomish, Washington, Police Department responded to the home of "Jack," who was reported to be in the process of committing suicide. It was also reported that Jack owned a gun and would have it with him. The officers found Jack sitting in his car with the engine running and a hose running from the exhaust pipe into one of the car's windows. After several requests, Jack finally got out of the car. But because Jack wouldn't show his hands when ordered, Sgt. Jeff Shelton told one of his officers to tase Jack in dart mode. This was done, causing Jack to fall to the ground. He was tased a second time when he pulled his hands underneath himself preventing the officers from handcuffing him. While all this was going on, plaintiffs in the civil lawsuit, Donald and Kristi Gravelet-Blondin, who were Jack's neighbors, came out of their house to investigate all the noise. According to the facts as alleged by the plaintiffs, Donald Gravelet-Blondin ("Blondin") saw Jack under the officers and moaning in

pain. So Blondin yelled at the officers; "*What are you doing to Jack*?" With Blondin still 37 feet from Jack and the officers, two officers instructed him to "*stop*" and to "*get back*." Blondin took one or two steps back and then froze, but made no threatening gestures. Sgt. Shelton warned Blondin that he would be tased if he did not leave, but fired his Taser before finishing the warning. Sgt. Shelton tased Blondin in dart mode, knocking him to the ground and causing him to hyperventilate. Sgt. Shelton asked Blondin if he "*want*[*ed*] *it again*" before turning to Ms. Blondin and warning; "*You're next*." Blondin was arrested for obstructing a police officer, a charge that was later dropped. The Gravelet-Blondins sued, alleging an excessive use of force and unlawful arrest. The federal trial court judge granted the defendant officer and city's motions for summary judgment, dismissing the lawsuit. The Blondins appealed.

Held: The Ninth Circuit Court of Appeal, in a split 2-to-1 decision, reversed. The Court first held, assuming that the plaintiffs' allegations are true, the force used by shooting Blondin with the Taser was excessive under the circumstances. "(T)he discharge of a taser in dart mode . . . (involves) an intermediate level of force with 'physiological effects, high levels of pain, and foreseeable risks of physical injury.'" Whether or not the discharge of a Taser into a person, in dart mode, is a reasonable use of force depends upon a consideration of the severity of the suspect's alleged crime, the presence (or absence) of an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight. In this case, it is debatable whether there was probable cause to arrest Blondin for interfering with the officers. So there may not have been any crime at all. But even if there was, such an offense is typically considered to be relatively minor. Secondly, with Blondin some 37 feet away from the officers (although the officers testified that he was six to 20 feet away) and backing up, or at least freezing in the position where he was, it does not appear that he constituted any immediate threat to the officers or anyone else. Lastly, there's no evidence that Blondin resisted arrest or was attempting to escape. While a warning that force was about to be used was given, it wasn't given until the Taser was being discharged without sufficient time to react. Should a civil jury believe the facts as plaintiffs allege, the force used under such a set of circumstances could well be found to have been excessive under the Fourth Amendment. The Court further held that Sgt. Shelton was not entitled to qualified immunity in that the limitations on the use of a Taser are now "clearly established," involving constitutional rights of which a reasonable person would have known. The case was therefore reversed and remanded back to the trial court for trial.

Note: I strongly suspect that when the trial is held, a whole different version of the facts is going to come out. For instance, it is ludicrous to believe that Sgt. Shelton tased Blondin as he was warning him, with Blondin merely standing there unmoving, frozen, 37 feet away, after having backed away a step or two as he was told. (Can anyone tell me how long the cables in a Teser stretch?) Also, there is a strong dissent, noting that the majority decision "fails to follow the Supreme Court's dictate to assess the use of force 'from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.'" (citing *Graham v. Connor* (1989) 490 U.S.386.) But the purpose of this ruling must not be forgotten. The use of a Taser has probably become all too common, officers using it while thinking (I'm guessing) that because they aren't shooting the suspect, it's perfectly okay to apply the lesser force of just tasing him. The Taser is being held in more and more cases, nation-wide, as a significant use of force that has the potential to do serious injury to a person. Officers need to remember that.

***Firearms and the Use of Force*:**

A.D. v. State of California Highway Patrol **(Apr. 3, 2013) 712 F.3rd 446**

Rule: Killing a suspect with a "purpose to harm . . . unrelated to legitimate law enforcement objectives" may constitute a Fourteenth Amendment due process violation.

Facts: California Highway Patrol officers, including Officer Stephan Markgraf, chased a stolen car into Oakland at about 2:00 a.m. on March 23, 2006. The car, later determined to being driven by Karen Eklund, was traveling without headlights and at high speeds. With officers in pursuit, Eklund crossed the Bay Bridge from Oakland into San Francisco at over 100 miles per hour. She then drove through San Francisco's city streets at speeds of up to 50 mph. She eventually drove down a dead-end street, getting herself trapped in a cul-de-sac. Officer Markgraf stopped his vehicle broadside to Eklund's car and some 30 feet behind her. Other patrol cars similarly boxed her in. Officer Markgraf got out of his vehicle and, with his gun drawn, got close enough to be able to see that she was alone and that no weapons were visible. Eklund put her car in reverse and drove backwards, ramming Officer Markgra's vehicle. She then drove forward and stopped. Officer Markgraf unsuccessfully tried to open Eklund's door while yelling at her to turn off the engine. A defiant Eklund yelled back, telling Markgraf to commit a sexually illicit act with himself. She then reversed again, ramming Officer Markgraf's car two more times. Ten second later, Officer Markgraf opened fire on Eklund through the passenger side window, emptying his magazine of 12-rounds into her car. No one else fired their guns. Eklund died at the scene. A.D. and J.E., Eklund's two minor children (ages 12 and 10), sued the Highway Patrol and Officer Markgraf in federal court, alleging a violation of their Fourteenth Amendment due process rights. Officer Markgraf's motion for summary judgment, claiming qualified immunity, was denied by the trial court. At trial, a civil jury found for the plaintiffs (Eklund's children), awarding them a whopping $30,000 each. Officer Markgraf's post-trial motion for judgment as a matter of law (in effective, asking to reverse the jury's verdict) was denied. He then appealed.

Held: The Ninth Circuit Court of Appeal affirmed. The constitutional violation found by the jury was that in shooting and killing Karen Eklund, Officer Markgraf violated her daughters' Fourteenth Amendment right to "*due process*." Such a violation occurs only if Markgraf's actions deprived Eklund's children of a "liberty interest;" i.e., their "*right to familial association*." Per prior case law, all children have a Fourteenth Amendment due process "*liberty interest*" in the "*companionship and society*" of a parent. A violation of this right occurs whenever an officer's actions "*shock the conscience*." Conscience-shocking actions come within two categories; i.e., through an officer's (1) "*deliberate indifference*" or (2) with a "*purpose to harm . . . unrelated to legitimate law enforcement objectives*." The former involves those circumstances where the officer has the opportunity to deliberate; i.e., think about what he is doing. The latter is when an officer doesn't have the time to deliberate, such as where he has to make a "*snap judgment because of an escalating situation*." An intent to do harm other than for a legitimate law enforcement purpose is shown where an officer uses force against a suspect to "bully" him, "teach him a lesson," or to "get even." In this case, the parties agreed that only the "*purpose to harm*" theory applied, if any. The jury held that Officer Markgraf did in fact shoot

and kill Eklund for the purpose of causing harm unrelated to a legitimate law enforcement objective. The Court agreed. Specifically, when killed, Eklund's vehicle was contained in a dead end street. The officers were all positioned such that they were not in the path of Eklund's vehicle, and other than Officer Markgraf, none of them indicated that they felt threatened at the time. Eklund's vehicle was either stopped when she was shot, or was moving forward but with no place to go. No one but Markgraf fired his or her weapon even though they all had them drawn. The fact that Officer Markgraf emptied his weapon of 12 rounds was also relevant to his intent to do harm for some reason other than a legitimate law enforcement objective. Further, the Court rejected Officer Markgraf's argument that this theory of liability was not well settled in the law and that he was therefore entitled to qualified immunity. A legal theory is "*well settled in the law*" when it is one that any reasonable officer should have understood. Any officer should know that it is improper to use force when motivated by some purpose "unrelated to a legitimate law enforcement purpose." The verdict against Officer Markgraf was therefore upheld.

Note: Interestingly enough, in addition to Eklund's car being a stolen vehicle, evidence excluded from the trial included the fact that she was driving while under the influence of methamphetamine at the time and had an unspecified "arrest record and criminal history." Knowing all that, one could make a valid argument that A.D. and J.E. were better off without her. But Karen Eklund's fitness as a mother was not the issue here. Shooting her under these circumstances was. While it's not my place to be lecturing police officers about the unnecessary use of a firearm, and while it's dangerous to be too reluctant to pull the trigger when necessary, all I can say is that anytime this ultimate use of force is used, you have to know that you will be second-guessed for the rest of your career as to whether it was really necessary under the circumstances. More importantly, you will likely second-guess yourself for the rest of your life. *So think*: Is it really necessary for me to take a life under these circumstances, or would a lesser degree of force likely suffice without putting myself or anyone else at serious risk?

***Miranda*; *Equivocal Invocations*:**
***Miranda*; *Reinitiation of an Interrogation*:**
***Miranda*; *Voluntariness*:**

People v. Duff **(Jan. 30, 2014) 58 Cal.4th 527**

Rule: An equivocal invocation at the initiation of an interrogation *may* have to be clarified before the interrogation can be continued. A suspect need not always be readvised of his *Miranda* rights upon the reinitiation of an interrogation after a mid-interrogation invocation. Whether a confession is involuntary depends upon the circumstances.

Facts: Defendant was upset at Roscoe Riley for having stiffed him on a narcotics deal. Defendant had traded Riley a .357 handgun in exchange for what was to be $100 or its equivalent in methamphetamine. But Riley never delivered the dope or the money, "disrespecting" defendant by refusing to complete his end of the transaction. So Defendant told several people, including his girlfriend, that he was going to set up a drug deal with Riley but then steal Riley's drugs and jewelry, and kill him. So on the evening of February 23, 1998, defendant did just that. Riley, however, complicated things by bringing Brandon Hagan along. Defendant, Riley, and Hagan were allegedly on the way to complete the drug transaction when

defendant asked to stop for a restroom break. They stopped at Taylor's Corner Bar in Sacramento where defendant went inside to use the bathroom. When he came back out to the car, parked in the bar's parking lot, witnesses observed him shoot two individuals, later determined to be Riley and Hagan, who were still sitting in the car. Defendant was then observed pushing Riley aside and driving the car away. As the drove away, witnesses heard another shot which defendant later admitted was him putting one more bullet into one of the victims who was still moving. Defendant drove to the home of some friends with whom he was staying, parked the car still containing the two bodies in a vacant lot behind the house, and went in to change his clothes. He called his girlfriend, Cynthia Fernando, who came to the house. Wiping the blood off of a .357-caliber revolver, defendant told her that he had just killed two people. He gave her the methamphetamine he'd taken from the victims. Fernando also helped him dispose of jewelry and guns that had belonged to the victims. The next day (February 24th), and before the discovery of the bodies, defendant was observed by police walking down the street near where his mother lived. Thinking he might be a subject with outstanding warrants, they attempted to contact him. Defendant fled, but was eventually caught and, after a brief struggle, subdued. A consensual search of defendant's mother's residence resulted in the recovery of some ammunition. With the police still unaware of his connection to the shooting at Taylor's Corner Bar, and not yet having found the victims' bodies, defendant was held on charges of being a felon in possession of ammunition. A search of the area where defendant was arrested resulted in the recovery of the .357-caliber revolver with blood in its chambers. With defendant still in custody for being a felon in possession of ammunition, the victims' bodies were finally found. The next day, February 26th, detectives questioned defendant about the murders. Detective Toni Winfield advised defendant of his *Miranda* rights, which he said he understood. But when she asked him if he wished to waive those rights and speak with her about the murders, defendant responded: "*I don't know. Sometimes they say it's—it's better if I have a–a lawyer.*" Detective Winfield agreed that "*sometimes they do*," but explained to him that while it was "*entirely up to you*," this was his opportunity to give her his side of the story. She also explained to him (in a somewhat disjointed manner) that he could stop the interview at any time or decline to answer any specific questions. She then asked him again whether he understood and whether he wished to talk with her at that point. Defendant indicated that he did understand and that he was willing to talk. But after less than an hour, defendant indicated that he wanted to halt the interrogation, indicating that he was "*kind of numb*," and "*brain boggled*." So Detective Winfield cut off the questioning. As she was preparing to leave, however, defendant asked to speak to Detective Dick Woods instead. After some small talk with Detective Woods, and an intervening bathroom break, defendant proceeded to admit having shot the two victims but claimed that it was in self-defense. Charged in state court, his admission to shooting the victims was used against him. He was eventually convicted of two counts of first degree murder with the special circumstances of multiple murders and murder committed during the commission of a robbery. Sentenced to death, his appeal to the California Supreme Court was automatic.

Held: The California Supreme Court unanimously affirmed. Among the issues on appeal, defendant argued that his equivocal reference to an attorney after being read his *Miranda* rights, while not sufficient to constitute an invocation, triggered a duty on Detective Winfield's part "to clarify (defendant's) desires and obtain a clear and unequivocal waiver." This, defendant urged, Winfield failed to do. The law is well-settled that an equivocal attempt to invoke one's right to the assistance of counsel, not made until *after* the suspect has waived his rights and an

interrogation is in progress, may be ignored by an interrogator. The Court found authority for defendant's argument that the rules may be different when the equivocal invocation is voiced at the time of the initial admonishment. But while there is some authority to the effect that an officer *must* seek such a clarification (e.g., see *United States v. Rodriguez* (9th Cir. 2008) 518 F.3rd 1072.) before beginning an interrogation (*People v. Box* (2000) 23 Cal.4th 1153.), this was not the issue here. That's because Detective Winfield did in fact seek clarification before beginning the interrogation. She first told defendant that the decision to invoke or waive was "entirely up to (him)," and that he could stop the interrogation anytime he wanted. She also told him that she "want(ed him) to feel confident with that," asking him if he was. Defendant responded that he was. She also told him that if he didn't feel like answering any particular question he didn't have to, and that he could stop the questioning at any time (which he later did). Defendant then clearly and unequivocally said that he understood all that and that he was willing to talk to the detective. At that point, the detective had an unequivocal waiver of defendant's rights and was free to begin the interrogation. Defendant next complained that his statements to Detective Woods (the second detective to question him) should have been suppressed. Everyone agreed that defendant had asked for the interrogation to stop. Acknowledging that he himself was responsible for the reinitiation of the interrogation, he argued that Detective Woods had a duty to readvise him of his *Miranda* rights before questioning him. The Court disagreed. Whether or not an in-custody suspect must be readvised depends upon the circumstances. A court must consider (1) the amount of time that has elapsed since the first waiver, (2) changes in the identity of the interrogating officer and the location of the interrogation, (3) any reminder of the prior advisement, (4) the defendant's experience with the criminal justice system, and (5) other indicia that the defendant subjectively understood and waived his rights. In this case, a readvisal was not constitutionally necessary when Detective Woods resumed questioning just minutes later, in the very same location as the initial interrogation, by a detective summoned by the defendant, where the defendant had been in prison four times before and was quite familiar with the criminal justice system. Lastly, the Court rejected defendant's argument that his statements were involuntary. In this argument, defendant emphasized his low intelligence, his past drug use, and pain he was suffering from the scuffle he had with police when he tried to flee the night of his arrest. The issue is whether defendant's "*will was overborne at the time he confessed*." A court is to consider the totality of the circumstances, including any police coercion applied, the length, location, and continuity of the interrogation, defendant's maturity, education, and physical and mental health. Reviewing the transcripts and videotape of his interrogation, the Court found that no threats were made, with the entire interview being very low key. Also, it was noted that defendant never did fully confess, claiming instead that he acted in self-defense. His will, therefore, was not "overborne." Defendant's statements were properly admitted into evidence against him.

Note: There is authority for the argument that a police interrogator must readvise a defendant upon the reinitiation of an interrogation that was interrupted by an invocation. (*In re Z.A.* (2012) 207 Cal.App.4th 1401, 1417-1419.) The Supreme Court here didn't even mention *Z.A.*, but rather cited a bunch of cases dealing with the reinitiation of interrogations after a break not caused by an invocation. Instead, says the Court, it depends on the circumstances. The better practice, however, would be to readvise *all* suspects who have interrupted their interrogations with an invocation and then later express an interest to reinitiate the questioning. When a suspect takes

the trouble to tell officers that he's changed his mind and wants to talk some more, he's not going to invoke again. And it eliminates the issue discussed in this case.